MONTANA LEGISLATIVE HISTORY

Chapter 119 1999

Bill H 514 S _____ Original bill & history ✓ C

H. Committee on Business & Labor			S. Committee on Labor & Employment		
Hearing Date(s)	2-10	___C exhibits only	Hearing Date(s)	3-9	___C
NO minutes - tapes erased	2-11	___C - no exhibits; tape log = no reference to HB 514			___C
		___C			___C
		___C	Date Out	3-9	___C
Date Out	2-12	___C standing committee rpt.			

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	03/23/1999			
(H) Signed by Governor	03/19/1999			
(H) Transmitted to Governor	03/18/1999			
(S) Signed by President	03/17/1999			
(H) Signed by Speaker	03/17/1999			
(C) Sent to Printing	03/17/1999			
(H) Returned from Enrolling	03/16/1999			
(H) Sent to Enrolling	03/16/1999			
(S) Returned to House	03/15/1999			
(S) 3rd Reading Concurred	03/15/1999	49	0	
(S) Scheduled for 3rd Reading	03/15/1999			
(S) 2nd Reading Concurred	03/13/1999	43	0	
(S) Scheduled for 2nd Reading	03/13/1999			
(S) Scheduled for 2nd Reading	03/12/1999			
(S) Committee Report--Bill Concurred	03/10/1999			(S) Labor and Employment Relations
(S) Committee Executive Action--Bill Concurred	03/10/1999	9	0	(S) Labor and Employment Relations
(S) Hearing	03/09/1999			(S) Labor and Employment Relations
(S) Rereferred to Committee	03/03/1999			(S) Labor and Employment Relations
(S) Referred to Committee	02/22/1999			(S) Business and Industry
(S) First Reading	02/22/1999			
(H) Transmitted to Senate	02/18/1999			
(H) 3rd Reading Passed	02/18/1999	88	10	
(H) Scheduled for 3rd Reading	02/18/1999			
(H) 2nd Reading Passed	02/17/1999	91	7	
(H) Scheduled for 2nd Reading	02/17/1999			
(H) Committee Report--Bill Passed as Amended	02/13/1999			(H) Business and Labor
(H) Committee Executive Action--Bill Passed as Amended	02/13/1999	13	5	(H) Business and Labor
(H) Hearing	02/10/1999			(H) Business and Labor
(C) Introduced Bill Text Available Electronically	02/05/1999			
(H) Referred to Committee	02/05/1999			(H) Business and Labor
(H) First Reading	02/05/1999			

(H) Introduced	02/05/1999			
(C) Draft Delivered to Requester	02/03/1999			
(C) Draft Ready for Delivery	02/02/1999			
(C) Draft in Assembly/Executive Director Review	02/02/1999			
(C) Draft in Final Drafter Review	02/02/1999			
(C) Bill Draft Text Available Electronically	02/02/1999			
(C) Draft in Input/Proofing	02/02/1999			
(C) Draft to Drafter/Edit Review (CAJ)	02/02/1999			
(C) Draft in Edit	02/02/1999			
(C) Draft in Legal Review	02/02/1999			
(C) Draft to Requester for Review	02/02/1999			
(C) Draft On Hold	12/18/1998			
(C) Draft Request Received	12/05/1998			

HB 497 SPONSOR: Bergsagel, Peggy SHORT TITLE: Repeal unisex insurance law
REFERRED ON: 02/04/1999 HEARD ON: 02/11/1999
TABLED ON: 02/12/1999
FINAL DISPOSITION 03/01/1999 (H) Missed Deadline for General Bill Transmittal

---

HB 501 SPONSOR: Ohs, Karl SHORT TITLE: Government performance and accountability act
REFERRED ON: 02/04/1999 HEARD ON: 02/10/1999
EXECUTIVE ACTION: 02/10/1999 Bill Passed -- VOTE: 12 - 5
FINAL DISPOSITION 04/22/1999 (S) Died in Standing Committee

HB 504 SPONSOR: Ohs, Karl SHORT TITLE: Remove prohibition on certain reimbursements for premiums on health plans
REFERRED ON: 02/04/1999 HEARD ON: 02/09/1999
EXECUTIVE ACTION: 02/09/1999 Bill Passed -- VOTE: 17 - 1
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

HB 506 SPONSOR: Sliter, Paul SHORT TITLE: Clarify consumer protection for auto body and glass repair
REFERRED ON: 02/04/1999 HEARD ON: 02/09/1999
EXECUTIVE ACTION: 02/18/1999 Bill Passed as Amended -- VOTE: 15 - 3
FINAL DISPOSITION 05/04/1999 Chapter Number Assigned

HB 507 SPONSOR: Lawson, Bob SHORT TITLE: Eliminate continuing education requirements for insurance producers
REFERRED ON: 02/05/1999 HEARD ON: 02/10/1999
TABLED ON: 02/10/1999
FINAL DISPOSITION 03/01/1999 (H) Missed Deadline for General Bill Transmittal

---

HB 512 SPONSOR: Soft, Loren SHORT TITLE: Generally revise chemical dependency insurance laws
REFERRED ON: 02/05/1999 HEARD ON: 02/10/1999
EXECUTIVE ACTION: 02/10/1999 Bill Passed -- VOTE: 15 - 3
FINAL DISPOSITION 04/29/1999 Chapter Number Assigned

HB 514 SPONSOR: Somerville, Roger SHORT TITLE: Revise laws governing payment of contractors
REFERRED ON: 02/05/1999 HEARD ON: 02/10/1999
EXECUTIVE ACTION: 02/13/1999 Bill Passed as Amended -- VOTE: 13 - 5
FINAL DISPOSITION 03/23/1999 Chapter Number Assigned

HOUSE BILL NO. 514

INTRODUCED BY R. SOMERVILLE

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING A CONSTRUCTION CONTRACT FROM INCLUDING PROVISIONS MAKING PAYMENT FROM A GENERAL CONTRACTOR TO A SUBCONTRACTOR CONTINGENT UPON PAYMENT FROM THE OWNER TO THE GENERAL CONTRACTOR OR REQUIRING A SUBCONTRACTOR TO WAIVE RIGHTS TO A LIEN OR PAYMENT BOND BEFORE PAYMENT FOR LABOR OR MATERIALS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Construction contracts requiring contingent payment or lien or bond waiver void.** A construction contract may not contain provisions:

(1) requiring a contractor, subcontractor, or material supplier to waive the right to a construction lien or a right to a claim against a payment bond before the contractor, subcontractor, or material supplier has been paid for the labor, materials, or both labor and materials, furnished by the contractor, subcontractor, or material supplier; or

(2) making a payment to a general contractor from a person who does not have a contractual agreement with the subcontractor or supplier a condition precedent to a general contractor's payment to a subcontractor or supplier.

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 28, chapter 2, part 7, and the provisions of Title 28, chapter 2, part 7, apply to [section 1].

NEW SECTION. **Section 3. Effective date -- applicability.** [This act] is effective on passage and approval and applies to construction contracts entered into on or after [the effective date of this act].

- END -

AUGUST 2000

THE FOLLOWING MINUTES WERE REPORTED BY THE HISTORICAL SOCIETY ARCHIVES AS BEING ERASED FROM THE TAPES AND ARE NO LONGER AVAILABLE FROM ANY SOURCE.

Pg. 3

LEGISLATIVE TAPE LOG

COMMITTEE: House Bus & Labor

DATE: 2/10/99

MINUTES		CONTENT NOTES
000	Tape 1B HB514	Rep Somerville D/D sites HB 514.
413	Tape 2A HB514	Carl Schweitzer - Sub-Contractors Prop. opponent - Ex # 5 & 6
112		Mike Foster - MT Contractors Assn. opponent -
163		Ed Maronick - Helena Sand & Gravel opponent -
186		Carl Burchfield - Rich Anderson Const opponent -
227		Frank Cordy - MT Bankers Assn opponent -
240		Jesse questions Foster Bitney - Senior -
341		Rep Somerville closed HB514.
400	~~Tape~~ Ex Motion HB501 Pass 12-5	Motion moves to pass HB501

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL DATE 2/10/99

NAME	PRESENT	ABSENT	EXCUSED
Chairman Bruce Simon	X		
Rep. Paul Sliter	X		
Rep. Bob Pavlovich	X		
Rep. Joe Barnett	X		
Rep. Rod Bitney	X		
Rep. Sylvia Bookout-Reineke	X		
Rep. Roy Brown	X		
Rep. David Ewer			X
Rep. Billie Krenzler	X		
Rep. Bob Lawson	X		
Rep. Gay Ann Masolo	X		
Rep. Gary Matthews	X		
Rep. Joe McKenney	X		
Rep. Carolyn Squires	X		
Rep. Jay Stovall	X		
Rep. Carley Tuss	X		
Rep. Carol Juneau			X
Rep. Cliff Trexler	X		

EXHIBIT 4
DATE 2/10/99
HB 514

R.H. GROVER INC.

9550 DERBY DRIVE • P.O. BOX 18010
MISSOULA, MONTANA 59808-8010
PHONE (406) 728-5231
FAX (406) 728-1935

10 February 1999

Montana State House of Representatives
Business & Labor Committee
Bruce Simon, Chairman
Re: Committee Hearing on HB 514

I wish to offer the following comments in support of HB 514, an act prohibiting a construction contract from including provisions making payment from a general contractor to a subcontractor contingent upon payment from the owner to the general contractor or requiring a subcontractor to waive rights to a lien or payment bond before payment for labor or materials. The purpose of this bill is to prohibit unfair construction contract clauses. In particular, clauses that require a subcontractor to waive their lien rights and clauses that make a subcontractor's payment from a general contractor totally contingent upon the owner of a construction project paying the general contractor.

These contract clauses unfairly shift the burden of financial risk for a payment delay or default on the job site from the general contractor to the subcontractors. In the modern construction industry, where a general contractor may serve simply as a job broker or construction manager, a general contractor may assume almost no risk for failure. I would like to offer a brief example of one of our experiences with the "paid when paid" clause.

I have worked in the construction industry in Montana for forty years as an employee, subcontractor and general contractor. R. H. Grover, Inc. does work as a mechanical and fire protection sprinkler subcontractor and as a general contractor on process plant construction.

We had a subcontract for the mechanical systems with a large general contractor who was acting as the construction manager for a large building project. Several major changes for additional equipment were made during the course of construction. We received change orders for the additional cost from the general contractor/construction manager. The owner was unable to pay about $1,000,000.00 of the cost of construction when the project was completed. The general contractor didn't really care because the money was all owed to subcontractors and the general contractor was able to hide behind the "pay when paid" clause in the contracts with the subcontractors. It took three years and hundreds of thousands of dollars in attorney fees to get the mess settled.

We have the responsibility when acting as the general contractor to determine the owner's financial solvency and to ensure payment on the project. The general contractor is involved in a direct contractual relationship with the owner, while the subcontractor is in a contractual relationship with the general contractor.

Thank you for the opportunity to offer these comments. Please support the passage of HB 514.

Sincerely

Dick Grover

Dick Grover, President

EXHIBIT 5
DATE 2/10/99
HB 514

CHRISTMAN Roofing Co.

102 Dunbar
Helena, MT 59602

Telephone: (406) 443-7929
Fax: (406) 449-2342

February 10, 1999

Representative Bruce Simon,
Chairman-House Business & Labor Committee

Re: HB 514

Dear Representative Simon,

As a small business-subcontractor, I request that you support HB 514. The purpose of the bill is to prohibit "unfair" construction contract clauses.

1. Clauses that require a subcontractor to waive their lien rights and shift the burden of financial risk for a delay or default on the job site from the general contractor to the subcontractor are wrong. In today's construction world, a general contractor often serves simply as a broker and assumes almost no risk for failure. This can affect the whole project if looked at closely, as many small subs will choose not to bid that particular job, causing in the end, higher prices to the owner. The general contractor, if serving as that broker, should assume responsibility for payment to subcontractors that have been awarded a bid.

2. Secondly, as a roofing contractor we are one of the first subs on a job and one of the first finished. Almost all commercial jobs we bid are provided with a 25 to 30 year manufacturers warranty. If indeed we have completed the job and provided the owner with a certified warranty, there is no good reason for payments to be withheld to us by the general contractor. There is absolutely no fair reason for payments to be withheld from us if the general contractor is delaying the job or, if errors are occurring because of the general's oversight.

Thank you for your attention and consideration.

Exhibit # 6
From Carl Schweitzer
The full exhibit is available from:
Montana Historical Society Archives
225 North Roberts 30 pgs
PO Box 201201
Helena, MT 59602-1201
Phone: (406) 444-4775

EXHIBIT 6
DATE 2/10/99
HB 514

MERICA

AGC DOCUMENT NO. 655
STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR
(Where the Contractor and Subcontractor Share the Risk of Owner Payment)

DRAFT

TABLE OF ARTICLES

1. AGREEMENT
2. SCOPE OF WORK
3. SUBCONTRACTOR'S RESPONSIBILITIES
4. CONTRACTOR'S RESPONSIBILITIES
5. PROGRESS SCHEDULE
6. SUBCONTRACT AMOUNT
7. CHANGES IN THE SUBCONTRACTOR'S WORK
8. PAYMENT
9. INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION
10. CONTRACTOR'S RIGHT TO PERFORM SUBCONTRACTOR'S RESPONSIBILITIES AND TERMINATION OF AGREEMENT
11. DISPUTE RESOLUTION
12. MISCELLANEOUS PROVISIONS
13. EXISTING SUBCONTRACT DOCUMENTS

This Agreement has important legal and insurance consequences. Consultation with an attorney and insurance consultant is encouraged with respect to its completion or modification.

© 1998, The Associated General Contractors of Americ

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 2-10-99

BILL NO. HB 514 SPONSOR(S) _____

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
P O I	Carl Schweitzer		Montana Subcontractors
P O I	~~Sandi Olsen~~	~~Helena~~	~~MBMG (Retired)~~
P O I	KARL BANSCHBACH	Helena	DICK ANDERSON CONSTRUCTION
P O I	Mike Foster	Helena	MT Contractors' Assoc
P O I	John CADBY	"	MT BANKERS ASSOC
P O I			
P O I			
P O I			
P O I			
P O I			
P O I			
P O I			
P O I			
P O I			

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE STANDING COMMITTEE REPORT

February 12, 1999

Mr. Speaker:

We, your committee on **Business and Labor** report that **House Bill 514** (first reading copy -- white) **do pass as amended.**

Signed: _____
Representative Bruce Simon, Chair

And, that such amendments read:

1. Title, lines 5 and 6.
Following: "PROVISIONS" on line 5
Strike: the remainder of line 5 through "OR" on line 6

2. Page 1, line 12.
Strike: "contingent payment or"

3. Page 1, line 13.
Strike: ":"

4. Page 1, line 14.
Strike: "(1)"

5. Page 1, line 17.
Strike: "; or"
Insert: "."

6. Page 1, lines 18 through 20.
Strike: subsection (2) in its entirety

- END -

Committee Vote:
Yes 13, No 5.

351546SC.ham

10:20
2-13

HB 229 SPONSOR: Ewer, David SHORT TITLE: Repeal building inspector enforcement of construction site health and safety
REFERRED ON: 03/03/1999 HEARD ON: 03/23/1999
EXECUTIVE ACTION: 03/24/1999 Bill Concurred -- VOTE: 7 - 0
FINAL DISPOSITION 04/06/1999 Chapter Number Assigned

HB 281 SPONSOR: Johnson, Royal SHORT TITLE: Submit increase on experience rated employers to electorate
REFERRED ON: 03/03/1999 HEARD ON: 03/11/1999
TABLED ON: 03/12/1999
FINAL DISPOSITION 04/22/1999 (S) Died in Standing Committee

HB 395 SPONSOR: Facey, Tom SHORT TITLE: Revise eligibility for unemployment insurance benefits for part time workers
REFERRED ON: 03/03/1999 HEARD ON: 03/09/1999
REFERRED ON: 03/16/1999
EXECUTIVE ACTION: 03/12/1999 Bill Concurred -- VOTE: 5 - 4
EXECUTIVE ACTION: 03/19/1999 Bill Concurred as Amended -- VOTE: 9 - 0
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

HB 461 SPONSOR: Simon, Bruce SHORT TITLE: Citations to plumbers or electricians on job sites without proof of licensure
REFERRED ON: 03/03/1999 HEARD ON: 03/11/1999
EXECUTIVE ACTION: 03/19/1999 Bill Concurred as Amended -- VOTE: 8 - 1
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

HB 514 SPONSOR: Somerville, Roger SHORT TITLE: Revise laws governing payment of contractors
REFERRED ON: 03/03/1999 HEARD ON: 03/09/1999
EXECUTIVE ACTION: 03/10/1999 Bill Concurred -- VOTE: 9 - 0
FINAL DISPOSITION 03/23/1999 Chapter Number Assigned

HB 557 SPONSOR: Ewer, David SHORT TITLE: Medical privacy for work comp claims
REFERRED ON: 03/03/1999 HEARD ON: 03/09/1999
EXECUTIVE ACTION: 03/12/1999 Bill Concurred as Amended -- VOTE: 9 - 0
FINAL DISPOSITION 04/29/1999 Chapter Number Assigned

HOUSE BILL NO. 514

INTRODUCED BY R. SOMERVILLE, G. MASOLO

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING A CONSTRUCTION CONTRACT FROM INCLUDING PROVISIONS ~~MAKING PAYMENT FROM A GENERAL CONTRACTOR TO A SUBCONTRACTOR CONTINGENT UPON PAYMENT FROM THE OWNER TO THE GENERAL CONTRACTOR OR~~ REQUIRING A SUBCONTRACTOR TO WAIVE RIGHTS TO A LIEN OR PAYMENT BOND BEFORE PAYMENT FOR LABOR OR MATERIALS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Construction contracts requiring ~~contingent payment or~~ lien or bond waiver void.** A construction contract may not contain provisions:

~~(1)~~ requiring a contractor, subcontractor, or material supplier to waive the right to a construction lien or a right to a claim against a payment bond before the contractor, subcontractor, or material supplier has been paid for the labor, materials, or both labor and materials, furnished by the contractor, subcontractor, or material supplier~~; or~~.

~~(2) making a payment to a general contractor from a person who does not have a contractual agreement with the subcontractor or supplier a condition precedent to a general contractor's payment to a subcontractor or supplier.~~

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 28, chapter 2, part 7, and the provisions of Title 28, chapter 2, part 7, apply to [section 1].

NEW SECTION. **Section 3. Effective date -- applicability.** [This act] is effective on passage and approval and applies to construction contracts entered into on or after [the effective date of this act].

- END -

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on March 9, 1999 at 3:08 A.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Tom Keating, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Alvin Ellis (R)
Sen. Bob Keenan (R)
Sen. Walter McNutt (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Eddye McClure, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 592, HB 395, HB 557, HB 514, 3/9/1999
Executive Action: HB 98, HB 514, HB 592

1,375 workers we are concerned about. The average benefit for Unemployment Insurance in Montana is $150. He said a part-time worker would receive half which is $75. $75 X 1,350 equals $101,250. The average length of employment duration in Montana is 13 weeks. If you multiply 13 times 101,000, it is $1.3M.

Last fiscal year we paid out $59M and collected $64M. We have a Trust Fund balance of $150M. He believes the $1.3M which he estimates might cost, we can afford for the social justice.

SEN. ELLIS reported the Trust Fund has grown a lot in the last four or five sessions. This is also set aside if a calamity hits a certain part of the State.

REP. FACEY answered that if we all had a crystal ball, we would invest in stocks.

Closing by Sponsor:

REP. FACEY closed by stating the State of Wisconsin has legislation similar to this. Montana has an unemployment system which is based on a sixty-year old system. That may not fit today's working environment. We should look at the equal protection clause and the Montana Constitution. Two people doing the same job have benefits which are greatly different. This bill does not change the method in which people qualify for Unemployment Insurance.

{Tape : 1; Side : B; Approx. Time Counter : 78 - 84}

HEARING ON HB 514

Sponsor: **REP. ROGER SOMERVILLE, HD 78, Kalispell**

Proponents: **Carl Schweitzer, Executive Secretary, Montana Subcontractor's Association**
Jack Pallister, President, Montana Subcontractor's Association

Opponents: **None.**

Opening Statement by Sponsor:

REP. ROGER SOMERVILLE, HD 78, Kalispell, explained this bill clarifies a few things for subcontractors. It is an act prohibiting a construction contractor from bringing provisions requiring a subcontractor to waive the rights to a lien or payment bond before payment for labor or materials. The purpose of this bill is to prohibit the unfair and unjust construction clauses, particularly the unfair clauses which require a subcontractor to waive his lien rights. Lien waiver clauses require a subcontractor to give up their lien rights before they even set foot on the construction site and that is unfair.

If a person is a contractor or subcontractor or construction supplier, and material is supplied to a construction site, that person expects to get paid for it. After the work is completed, if the owner doesn't pay for it, a lien can be attached to the owner's property. When the property is sold, the proceeds from that sale will be returned to that person to satisfy the lien. In some cases, some subcontractors get paid back 25 cents on a dollar. If the person completes the construction process and doesn't get paid, they are stuck. General contractors are asking the subcontractors to sign these contracts because they want to hand over a project with no liens to the owner. Liens are a decade-old process of protecting the construction worker and suppliers and gives them the right to get paid for the material. He asked for support of this HB 514.

Proponents' Testimony:

Carl Schweitzer, Executive Secretary, Montana Subcontractor's Association, explained when this bill was introduced it had two parts, but one part was banned by the House. ***{Tape : 2; Side : A; Approx. Time Counter : 84 - 91}*** He handed out **EXHIBIT(8)**. This was actually part of a contract in Billings and this particular paragraph was the Lien Waiver Clause which was in that contract. Other states have actually enacted similar provisions and this bill was copied from a statute passed in Wisconsin. Other states which have enacted it are Maryland, North Carolina, Missouri, Illinois, and a lot of other states. He asked the Committee to support this bill.

Jack Pallister, President, Montana Subcontractor's Association,

stated he is a subcontractor, and a prime contractor in many cases. His agreements with any subcontractors does not include this type of language which would not allow them to file a lien on any project. If he had $100,000 agreement with a general contractor and his first pay request was $20,000, if he paid $20,000, along with that he would get a partial lien release waiver. They are asking for that added protection that if they don't get paid and get a bad contractor, there is some recourse for collection.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. SOMERVILLE remarked we need to help the subcontractors out. Not all subcontractors have a large enough organization to have their own attorney and to have an individual who has been 20 years in the state government to understand how to handle contracts and strike those clauses out.

EXECUTIVE ACTION ON HB 514

Motion/Vote: **SEN. ELLIS moved** that **HB 514 BE CONCURRED IN. Motion carried unanimously.**

{Tape : 2; Side : B; Approx. Time Counter : 91 - 115}

EXECUTIVE ACTION ON HB 592

Discussion:

SEN. COCCHIARELLA asked **John Andrew, Department of Labor,** to provide information on this bill.

Mr. Andrew explained he read through the recommendations of the work groups. They concluded by stating the work group recommends recovery under Montana law be the same as under Federal law. It is his understanding as this bill is drafted now, the recovery for the two and three year time period would be the same as under the Federal law and that two years' recovery would begin on the date the claim was filed as exists under Federal law. If it is a

MONTANA SENATE
1999 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE 3/9/99

NAME	PRESENT	ABSENT	EXCUSED
SEN. SUE BARTLETT	✓		
SEN. DALE BERRY	✓		
SEN. VICKI COCCHIARELLA	✓		
SEN. ALVIN A. ELLIS, JR.	✓		
SEN. BOB KEENAN	✓		
SEN. WALT MC NUTT	✓		
SEN. BILL WILSON	✓		
SEN. FRED THOMAS, VICE CHAIRMAN	✓		
SEN. TOM KEATING, CHAIRMAN	✓		

SENATE LABOR & EMPLOYME
EXHIBIT NO. 8
DATE 3-9-99
BILL NO. HB 514

Lien Waiver Clause

Subcontractor for itself, it's subcontractors and all parties acting through or under it hereby covenants and agrees not to file any liens, stop notice, or to make any claims against the premises or any part thereof or against any building or buildings or other improvements erected or made or to be erected thereon, or against any monies due or to become due to the contractor, in accordance with any statute, State or Federal, for any cause whatsoever, and further covenants to release and hereby does releases the premises upon which the project is located and each and every part thereof, and any and all building that may now or hereafter be erected thereon, and any monies due or to become due to the contractor from any and every lien, charge or claim of any nature whatsoever, that it might otherwise at any time have against the same or any part thereof, for work done regarding the erection and construction of any building or any buildings upon the said premises.

DATE 3-9-99

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: HB 557, 395, 514

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Carl Schweitzer	457-1334	Montana Subcontractors Ass'n	HB 514	~	
Kate Cholena	9-7917	MT Women Lobby	395	X	
Judy Smith	549-1997	Self	395	✓	
Sue Spanke	721-5848	Self	395	✓	
George Wood	(Hol) 549-8849	MT. Self Insurers Assoc	557	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-9-99

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: HB 557, 395, 514

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Christian Schwitter	443-3124	MTLA	HB 557	Y	
Nancy Butler	444-7725	State Fund	HB Amend 557	X	
Kevin Braun	4494658	Kevin Braun	HB557		
Mike McCarter	444-7794	Workers Comp Court	International		
Sami Butler	Helena	MNA	557		
Todd Thera	Helena	MNA	557	X	
Don Judge	Helena	MT State AFL-CIO	HB557 HB395	X	
Jerry Driscoll	254-1455	Building Trades	HB 395	X	

Prof

X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

SENATE STANDING COMMITTEE REPORT

March 10, 1999

Mr. President:

We, your committee on **Labor and Employment Relations** report that **House Bill 514** (third reading copy -- blue) **be concurred in**.

Signed: _____
Senator Tom Keating, Chair

To be carried by Senator Bob Keenan

- END -

Committee Vote:
Yes 9, No 0.

540902SC.sjo

AN ACT PROHIBITING A CONSTRUCTION CONTRACT FROM INCLUDING PROVISIONS REQUIRING A SUBCONTRACTOR TO WAIVE RIGHTS TO A LIEN OR PAYMENT BOND BEFORE PAYMENT FOR LABOR OR MATERIALS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Construction contracts requiring lien or bond waiver void. A construction contract may not contain provisions requiring a contractor, subcontractor, or material supplier to waive the right to a construction lien or a right to a claim against a payment bond before the contractor, subcontractor, or material supplier has been paid for the labor, materials, or both labor and materials, furnished by the contractor, subcontractor, or material supplier.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 28, chapter 2, part 7, and the provisions of Title 28, chapter 2, part 7, apply to [section 1].

Section 3. Effective date -- applicability. [This act] is effective on passage and approval and applies to construction contracts entered into on or after [the effective date of this act].

- END -